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<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT DISTRICT OF SOUTH DAKOTA SOUTHERN DIVISION</p> <p>=====</p> <p>COURTNEY JAYNE, Individually and as Personal Representative of the ESTATE of M.Z.,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs. Case No. 4:18-CV-4088-KES</p> <p>CITY OF SIOUX FALLS,</p> <p style="text-align: center;">Defendant.</p> <p>=====</p> <p>Videotaped Deposition of: DAVID FISCHER Date: February 21, 2019 Time: 9:00 a.m.</p> <p>=====</p> <p style="text-align: center;">APPEARANCES</p> <p>Mr. Anthony J. Schrank Robins Kaplan, LLP Minneapolis, Minnesota</p> <p style="text-align: center;">Attorney for the Plaintiff</p>	<p style="text-align: center;">I N D E X</p> <p>1</p> <p>2 Examination: Page</p> <p>3 By Mr. Schrank 5</p> <p>4 Exhibit Nos.: Page</p> <p>5 <u>Exhibit 16</u> - Press Release, April 12, 2018</p> <p>6 CITY 00381-00382 28</p> <p>7 <u>Exhibit 17</u> - Photograph 38</p> <p>8 <u>Exhibit 18</u> - Police report, CITY 00017-00084 40</p> <p>9 <u>Exhibit 19</u> - Caution sign, CITY 01177 70</p> <p>10 <u>Exhibit 20</u> - Big Muddy Workshop docs,</p> <p>11 CITY 01028-01139 86</p> <p>12 -oOo-</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>APPEARANCES: (Continued)</p> <p>Mr. James E. Moore Woods, Fuller Shultz & Smith, P.C. Sioux Falls, South Dakota</p> <p>and</p> <p>Ms. Karen A. Leonard Sioux Falls City Attorney's Office Sioux Falls, South Dakota</p> <p style="text-align: center;">Attorneys for the Defendant</p> <p>REPORTED BY: Audrey M. Barbush, RPR</p> <p>VIDEOGRAPHER: Jason Davis, Starhaven Films</p>	<p style="text-align: center;">S T I P U L A T I O N</p> <p>1</p> <p>2 It is hereby stipulated and agreed by and between the</p> <p>3 above-named parties through their attorneys of record, whose</p> <p>4 appearances have been hereinabove noted, that the videotaped</p> <p>5 deposition of DAVID FISCHER may be taken at this time and</p> <p>6 place, that is, at the offices of Woods, Fuller, Shultz &</p> <p>7 Smith, P.C., 300 South Phillips Avenue, Suite 300,</p> <p>8 Sioux Falls, South Dakota, on the 21st day of February,</p> <p>9 2019, commencing at the hour of 9:00 a.m.; said deposition</p> <p>10 taken before Audrey M. Barbush, a Registered Professional</p> <p>11 Reporter and Notary Public within and for the State of South</p> <p>12 Dakota. Objections, except as to the form of the question,</p> <p>13 are reserved until the time of trial. Insofar as counsel</p> <p>14 are concerned, the reading and signing of the transcript by</p> <p>15 the witness is not waived.</p> <p>16 -oOo-</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 37</p> <p>1 A No.</p> <p>2 Q During your review of the 2013 incident, you never</p> <p>3 became aware that the boy was playing with white</p> <p>4 bubbles before he fell into the river?</p> <p>5 A No.</p> <p>6 Q Did anybody at the City ever tell you that he was</p> <p>7 playing with white bubbles before he fell into the</p> <p>8 river?</p> <p>9 A No.</p> <p>10 Q So it's your testimony today that you don't think that</p> <p>11 foam in the river is a hazard?</p> <p>12 MR. MOORE: I'll just object to form and</p> <p>13 foundation. It's not clear what foam, at what time.</p> <p>14 THE WITNESS: I have never seen foam in the</p> <p>15 river -- at any location along the river, where --</p> <p>16 where I believed it was a hazard. The only context</p> <p>17 that I've ever seen the foam in was one that was</p> <p>18 more -- that is not very aesthetic.</p> <p>19 MR. SCHRANK: Will you please mark that as Exhibit</p> <p>20 No. 17, Ms. Court Reporter.</p> <p>21 BY MR. SCHRANK:</p> <p>22 Q I understand that maybe you've never personally been to</p> <p>23 Falls Park when this foam has occurred, but you work</p> <p>24 for the City of Sioux Falls in their parks and</p> <p>25 recreation department so you have other knowledge other</p>	<p style="text-align: right;">Page 39</p> <p>1 Q Right. It's obscuring the edge, true?</p> <p>2 A True.</p> <p>3 Q When it's obscuring the edge, you don't know where that</p> <p>4 fall from the rock to the river is, true?</p> <p>5 A True.</p> <p>6 Q Isn't that a hazard when you don't know where a fall is</p> <p>7 from the platform that you're standing on?</p> <p>8 A Could be.</p> <p>9 Q Is that something that the City wants its citizens next</p> <p>10 to, a drop-off where you can't see the ledge?</p> <p>11 A No.</p> <p>12 Q So the foam that builds up in the Big Sioux River is a</p> <p>13 hazard, true?</p> <p>14 MR. MOORE: I'll object to form.</p> <p>15 THE WITNESS: I don't think the foam -- again, I</p> <p>16 don't think the foam itself is a hazard. It's ugly.</p> <p>17 When it gets to this point, which I've never seen -- in</p> <p>18 my 27 years of employment I've never seen the foam</p> <p>19 build up like this -- I can see where hiding some of</p> <p>20 the edges and stuff, that it could be thought to be --</p> <p>21 MR. SCHRANK: If you could please mark this as --</p> <p>22 THE WITNESS: -- hiding --</p> <p>23 MR. SCHRANK: -- <u>Exhibit No. 18</u>.</p> <p>24 THE WITNESS: -- hiding the ground that's</p> <p>25 underneath it.</p>
<p style="text-align: right;">Page 38</p> <p>1 than what you've just personally seen, true?</p> <p>2 Things are reported to you, true?</p> <p>3 A Yes.</p> <p>4 Q And you review documents in your professional capacity</p> <p>5 as the assistant director of the parks and recreation,</p> <p>6 true?</p> <p>7 A Yes.</p> <p>8 Q And you review incidents in your role as assistant</p> <p>9 parks and -- assistant park and recreation director,</p> <p>10 true?</p> <p>11 A Yes.</p> <p>12 Q So what I'm asking you is, looking at <u>Exhibit No. 17</u> --</p> <p>13 (<u>Exhibit 17</u> is marked for identification.)</p> <p>14 BY MR. SCHRANK:</p> <p>15 Q Looking at this picture, what do you see?</p> <p>16 A A police officer and a buildup of foam.</p> <p>17 Q And that foam could appear as a snowbank, true?</p> <p>18 A That -- that's not the perception I have.</p> <p>19 Q Is that foam a hazard?</p> <p>20 A I don't know that it's -- I don't know that itself it's</p> <p>21 a hazard.</p> <p>22 Q Well --</p> <p>23 A I can see where it's hiding some of the ground</p> <p>24 underneath of it so you maybe wouldn't know what was</p> <p>25 there.</p>	<p style="text-align: right;">Page 40</p> <p>1 BY MR. SCHRANK:</p> <p>2 Q Right. So the foam has created a hazard in Falls Park?</p> <p>3 A Yes.</p> <p>4 Q When did the City first become aware that this foam</p> <p>5 creates a hazard in Falls Park?</p> <p>6 A When did the City?</p> <p>7 Q Yeah.</p> <p>8 A I can't speak for the entire City.</p> <p>9 Q Well, after the 2013 incident, didn't they try to use</p> <p>10 an anti-foam chemical?</p> <p>11 A Not to my knowledge.</p> <p>12 Q What -- if you could please take a look at Exhibit</p> <p>13 No. 18.</p> <p>14 (<u>Exhibit 18</u> is marked for identification.)</p> <p>15 BY MR. SCHRANK:</p> <p>16 Q Just looking at the first page of this, have you ever</p> <p>17 seen a document that looks like this?</p> <p>18 A Yes, I've seen police reports.</p> <p>19 Q This is a police report from the City of Sioux Falls</p> <p>20 Police Department, true?</p> <p>21 A Yes.</p> <p>22 Q If you'd turn to page CITY 18, the second page of this</p> <p>23 document, it states "On 3-14-13, at approximately 1802</p> <p>24 hours, I was dispatched to Falls Park at 301 East Falls</p> <p>25 Park Drive for a water rescue. Metro Communications</p>